

STATE OF VERMONT

SUPERIOR COURT
BENNINGTON UNIT
STATE OF VERMONT

CRIMINAL DIVISION
Docket No. 981-10-17 Bncr

V.

CHRISTIAN JAMES, Defendant

STATE'S RESPONSE TO MOTION TO REDUCE SENTENCE

NOW COMES THE STATE OF VERMONT, by and through its Deputy State's Attorney, Alexander Burke, and submits this response in opposition to defendant's motion to reduce his sentence.

The motion should be denied because there is no basis to grant a motion to reconsider. In *State v. King*, 2007 VT 124, ¶ 6, the Vermont Supreme Court reiterated:

Sentence reconsideration under 13 V.S.A. § 7042 and Rule 35 is a limited remedy. The trial court has wide discretion in determining what factors to consider during sentence reconsideration, and may in its discretion deny a sentence-reconsideration motion without an evidentiary hearing. The purpose of sentence reconsideration is to "Give the district court an opportunity to consider anew the circumstances and factors present at the time of the original sentencing." It is not intended as a forum to review post-incarceration circumstances or events.

In *State v. Allen*, 145 Vt. 393, 396 (1985), the Supreme Court stated, "[i]n light of the obvious consideration given by the judge after lengthy and detailed proceedings, we hold that the judge did not abuse his discretion in ruling on the motion for reconsideration of sentence without an evidentiary hearing" after the court denied at Rule 35 motion after a two day hearing with multiple witnesses and a pre-sentence report.

In this case, defendant was sentenced on January 17, 2019 at a contested sentencing hearing. After victim impact statements and argument, the Court imposed a

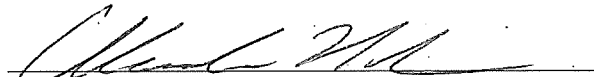
sentence of 4-8 years to serve. Defendant now seeks a reduction of his sentence based solely upon an error in the transcript. The defendant argues the Court incorrectly believed his BAC was .390 based upon the transcript of the sentencing. The transcript reads, "And on the bad side it was a 0.39 (sic) test..." 1/17/19 Tr. 26:12. The defendant's BAC in this case was .239. The Court clearly knew the BAC was .239 and the transcriber was not able to catch the Court stating the full BAC. This is not a reason for the Court to reconsider sentence.

In addition, defendant engages in victim blaming, arguing the Court should not consider the impact the crash on the victim because the victim had a BAC of .183. The evidence in the case clearly showed that the victim's vehicle was either stopped or close to stopped when the defendant crashed into it causing the death of the victim. The impact that this crash had on the victim is something that the Court is entitled to consider and properly did consider it in this case. There is absolutely no basis to consider the victim's BAC in deciding the sentence for defendant. It was the defendant who caused the crash that resulted in the loss of life of the victim. That is what he pled to. As such, there is no basis for the Court to reconsider the sentence.

Given the lengthy consideration the Court took in deciding what to do with this case, it is clear that the Court weighed all the evidence in a calm manner and imposed a properly considered sentence. This case is similar to *State v. Allen*, 145 Vt. 393, 396 (1985), where the Court should deny the motion without a hearing given the lengthy consideration the Court went into in imposing the sentence.

WHEREFORE, the Court should deny the motion without a hearing.

Dated this day of April 10, 2019, in Bennington, Vermont.


Alexander Burke
Deputy State's Attorney
200 Veterans Memorial Drive, Suite 10
Bennington, VT 05201
(802) 442-8116

Cc: Christopher Montgomery, Esq.